

11-16-2010

State v. Pullin Augmentation Record Dckt. 37155

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In the Supreme Court of the State of Idaho

STATE OF IDAHO,

Plaintiff-Respondent,

v.

ADAM R. PULLIN,

Defendant-Appellant.

)
) ORDER GRANTING MOTION TO
) AUGMENT THE RECORD
)
) Supreme Court Docket No. 37155-2009
) Twin Falls County Docket No.
) 2009-2420
)
)

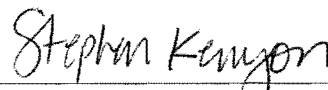
A MOTION TO AUGMENT THE APPELLATE RECORD and an AFFIDAVIT IN SUPPORT OF MOTION TO AUGMENT THE APPELLATE RECORD were filed by counsel for Appellant on October 27, 2010. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion:

1. Order Upon 180-Day Review Hearing, I.C. §19-2601(4), Suspending Sentence and Order Placing Defendant on Probation, I.C. § 19-2601(2) and (5).

DATED this 16th day of November 2010.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

Count original

DISTRICT COURT
Fifth Judicial District
County of Twin Falls - State of Idaho

MAY 11 2010

By _____ Clerk
_____ Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

State of Idaho,

Plaintiff,

VS.

Case No. CR-2009-4062

Adam Richard Pullin

SSN

DOB

Defendant.

**ORDER UPON 180-DAY REVIEW HEARING, I.C. §19-2601(4), SUSPENDING
SENTENCE AND ORDER PLACING DEFENDANT ON PROBATION,
I.C. § 19-2601(2) and (5).**

I. INTRODUCTION.

1. The date of the disposition hearing following the completion of the 180-Day Retained Jurisdiction program was 05/10/10, (hereinafter called disposition date).
2. The State of Idaho was represented by counsel, Jill Sweesy, of the Twin Falls County Prosecutor's office.
3. The defendant, Adam Richard Pullin, appeared personally. I.C. § 19-2503.
4. The defendant was represented by counsel, Peter Hatch.
5. Randy J. Stoker, District Judge, presiding.

II. BRIEF PROCEDURAL BACKGROUND.

1. On 09/10/09, the defendant was found guilty of Possession of a Controlled Substance, to-wit: Methamphetamine.
2. On 11/16/09, the defendant was committed to the custody of the Idaho State Board of Correction, Boise, Idaho for a unified sentence (I.C. § 19-2513) of **7 years**; which is comprised of a mandatory minimum period of commitment of **3 years**, followed by an indeterminate period of custody of **4 years**, with the precise time of the indeterminate portion to be set by said Board according to law, with the total sentence not to exceed 7 years (the original sentence). However, pursuant to I.C. § 19-2601(4), the Court suspended the execution of the judgment during the first one hundred and eighty (180) days of the sentence to the custody of the Idaho State Board of Correction, during which time the Court **retained jurisdiction** over the defendant.
3. Thereafter, the Court received and lodged an Addendum to the Presentence Investigation, dated 04/20/10 (hereinafter called "PSI Addendum"), from the Department of Corrections, North Idaho Correctional Institution, a copy of which is in the Court file and is by this reference incorporated herein.
4. The PSI Addendum recommends the sentencing court impose probation at this time.

III. ORDER GRANTING PROBATION.

The Court, having considered the PSI Addendum recommendations from the Board of Corrections, and having heard recommendations of counsel, and having reviewed the files and records in the above entitled matter, and being fully advised in the premises, now enters the following order:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the sentence ordered on 11/16/09, in the above entitled matter is suspended and the defendant is placed on probation for a period of **4 years** beginning on 05/10/10 to and under the control of the Idaho State Board of Correction, (I.C. § 19-2601(5), I.C. § 20-219, and I.C.R. 33(d)), subject to the following terms:

- A. **Court Costs, Fines, and Restitution:** The defendant shall pay any of the remaining balance of court costs, fines, and restitution from the original sentence.
- B. **Time allowed for payment of court costs, fines and restitution:** The defendant must pay all court costs, fines and restitution. To that end, and beginning on the date of 09/01/10, and continuing on the 1st day of each calendar month thereafter, the defendant shall make monthly payments to the clerk of the court in the sum of at least \$200, until all court costs, fines and restitution are paid in full. The defendant is only required to make a single \$200 monthly payment between this case and Twin Falls County Case CR-09-2420.

- C. **Credit for time served:** The defendant is given credit for time previously served locally and with the Idaho Department of Corrections in connection with this case. I.C. § 18-309.
- D. **Supervision Level:** Pursuant to I.C. § 20-219, I.D.O.C. is charged with the duty of supervising all persons convicted of a felony and placed on probation. As such, the level of supervision is left to the discretion of I.D.O.C.
- E. **General and Specific Conditions:** Abide by the Court Ordered General Conditions of Probation previously signed and attached hereto as Exhibit 1 and the Court Ordered Specific Conditions of Probation previously signed and attached hereto as Exhibit 2, which exhibits are by this reference incorporated herein.
- F. **Special Terms and Conditions:** In addition, the Court orders the following special conditions.
- a. **Community service drug case:** The defendant shall perform 100 hours of community service in this case by 05/10/11 at the direction of the defendant's probation officer, I.C. § 37-2738. This community service is in addition to the community service ordered in Twin Falls County Case CR-09-2420. AS
- b. **APSI:** The defendant shall abide by all recommendations as given in the defendant's APSI. AP
- c. **Time allowed for payment of court costs, fines and restitution:** The defendant must pay all court costs, fines and restitution. To that end, and beginning on the date of 09/01/10, and continuing on the 1st day of each calendar month thereafter, the defendant shall make monthly payments to the clerk of the court in the sum of at least \$200, until all court costs, fines and restitution are paid in full. The defendant is only required to make a single \$200 monthly payment between this case and Twin Falls County Case CR-09-2420. Any federal or state tax refund or any Earned Income Tax Credit received by the defendant shall be applied by the defendant to the payment of court costs, fines, and restitution. AP
- G. **Treatment Expense:** If the Court has ordered an Alcohol / Substance Abuse Evaluation and Treatment and/or a Mental Health Evaluation and Treatment pursuant to I.C. § 19-2524, the expenses of the assessments, examinations, and any treatment ordered by the court shall be borne by the department of health and welfare. I.C. § 19-2524(6).

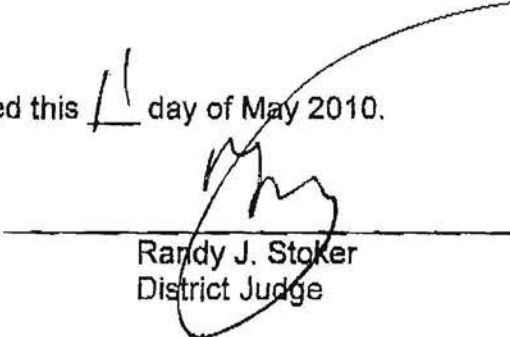
IV. RIGHT TO APPEAL/LEAVE TO APPEAL IN FORMA PAUPERIS.

The Right: The Court advised the defendant, of the right to appeal this judgment within forty two (42) days of the date it is file stamped by the clerk of the court. I.C.R. 33(a)(3), I.A.R. 14(a).

In Forma Pauperis: The Court further advised the defendant of the right of a person who is unable to pay the costs of an appeal to apply for leave to appeal in forma pauperis, meaning the right as an indigent to proceed without liability for court costs and fees and the right to be represented by a court appointed attorney at no cost to the defendant. I.C.R. 33(a)(3), I.C. § 19-852(a)(1) and (b)(2).

IT IS SO ORDERED.

Dated this 11 day of May 2010.




Randy J. Stoker
District Judge

ACCEPTANCE OF PROBATION

State of Idaho,)
) ss.
County of Twin Falls)

I, Adam Richard Pullin, being first duly sworn on oath, deposes and states that I reviewed Exhibit 1, General Conditions of Probation, and Exhibit 2, Specific Conditions of Probation. That I have received a copy of this **ORDER UPON 180-DAY REVIEW HEARING, I.C. §19-2601(4)**, that I understand the terms of that probation, and I agree to abide by the conditions outlined in this order. I further certify that I have read and understand each term of probation.


Adam Richard Pullin


Witnessing Probation Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of May 2010, I caused to be served a true and correct copy of the foregoing, by the method indicated below, and addressed to the following:

Jill Sweesy
Twin Falls County Prosecuting Attorney
P.O. Box 126
Twin Falls, ID 83303

☐ U.S. Mail
☐ Hand delivered
☐ Faxed
☒ Court Folder

Peter Hatch
Twin Falls County Public Defender
P.O. Box 126
Twin Falls, ID 83303

☐ U.S. Mail
☐ Hand delivered
☐ Faxed
☒ Court Folder

Idaho Department of Corrections
Central Records
1299 N. Orchard Ste 110
Boise, Idaho 83706

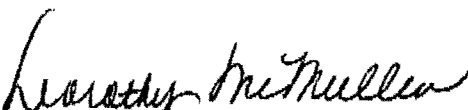
☒ U.S. Mail
☐ Hand delivered
☐ Faxed

Twin Falls County Jail

☒ Court Folder

Idaho Department of Probation

☒ Court Folder



Dorothy McMullen
Deputy Clerk

EXHIBIT 1**COURT ORDERED****GENERAL CONDITIONS OF PROBATION****IMPOSED AT THE REQUEST OF IDAHO DEPT. OF CORRECTION****I.C. §§ 20-219, 19-2601(5), and I.C.R. 33(d).**

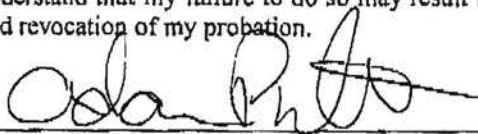
1. **Supervision Level:** The defendant's level of supervision, including caseload type and electronic monitoring shall be determined by the Idaho Dept of Correction. DP
2. **Laws and Conduct:** The defendant shall obey all municipal, county, state and federal laws. The defendant shall comply with all lawful requests of any agent of the Idaho Dept of Correction. The defendant shall be completely truthful at all times with any agent of the Idaho Dept of Correction. During any contact with law enforcement personnel the defendant shall provide their identity, notify the officer(s) that they are under supervision and provide the name of their supervising officer. The defendant shall notify their supervising officer of the contact within 24 hours. DP
3. **Residence:** The defendant shall not change residence without first obtaining permission from an authorized agent of the Idaho Dept of Correction. DP
4. **Reporting:** The defendant shall report to his/her supervising officer as directed. The defendant shall provide truthful and accurate information or documentation whenever requested by the Idaho Dept of Correction. DP
5. **Travel:** The defendant shall not leave the State of Idaho or the assigned district without first obtaining permission from his/her supervising officer. DP
6. **Extradition:** If the defendant does leave the State of Idaho, with or without permission, the defendant does hereby waive extradition to the State of Idaho and will not contest any effort to return the defendant to the State of Idaho. DP
7. **Employment/Alternative Plan:** The defendant shall seek and maintain gainful, verifiable, full-time employment. The defendant shall not accept, cause to be terminated from, or change employment without first obtaining written permission from his/her supervising officer. In lieu of full-time employment, the defendant may participate in full-time education, a combination of employment and education, vocational program or other alternative plan based on the offender's specific situation and as approved by his/her supervising officer. DP
8. **Alcohol:** The defendant shall not purchase, possess, or consume alcoholic beverages in any form and will not enter any establishment where alcohol is a primary source of income. DP
9. **Controlled Substances:** The defendant shall not use or possess any illegal drug or any substance that simulates the effect of an illegal drug. The defendant shall not use or possess any paraphernalia for the purpose of ingesting any illegal drug. The defendant shall not use or possess any controlled substances unless lawfully prescribed for him/her by a licensed physician, or dentist. The defendant shall use medications only in the manner prescribed by their physician or dentist. DP
10. **Firearms/Weapons:** The defendant shall not purchase, carry, possess or have control of any firearms, chemical weapons, electronic weapons, explosives or other dangerous weapons. Other dangerous weapons may include, but are not limited to: knives with blades over two and one half inches in length, switch-blade knives, brass knuckles, swords, throwing stars and other martial arts weapons. Any weapons or firearms seized will be forfeited to IDOC for disposal. The defendant shall not reside in any location that contains firearms unless the firearms are secured and this portion of the rule is exempted in writing by the District Manager. DP

11. **Search:** The defendant shall consent to the search of his/her person, residence, vehicle, personal property, and other real property or structures owned or leased by the defendant or for which the defendant is the controlling authority conducted by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant waives his/her Fourth Amendment Rights concerning searches. AD
12. **Cost of Supervision:** The defendant shall comply with Idaho Code 20-225, which authorizes the Idaho Dept of Correction to collect a cost of supervision fee. The defendant shall make payments as prescribed in his/her monthly cost of supervision bill. AD
13. **Associations:** The defendant shall not associate with any person(s) designated by any agent of the Idaho Dept of Correction. AD
14. **Substance Abuse Testing:** The defendant shall submit to any test for alcohol or controlled substances as requested and directed by any agent of the Idaho Dept of Correction or law enforcement officer. The defendant may be required to obtain tests at their own expense. If the results of the test indicate an adulterant has been used to interfere with the results, that test will be deemed to have been positive. AD
15. **Evaluation and Program Plan:** The defendant shall obtain any treatment evaluation deemed necessary and as ordered by the Court or any agent of the Idaho Dept of Correction. The defendant shall meaningfully participate in and successfully complete any treatment, counseling or other programs deemed beneficial and as directed by the Court or any agent of the Idaho Dept of Correction. The defendant may be required to attend treatment, counseling or other programs at their own expense. AD
16. **Cooperation with Supervision:** When home, the defendant shall answer the door for the probation officer. The defendant shall allow the probation officer to enter their residence, other real property, place of employment and vehicle for the purpose of visitation, inspections and other supervision functions. The defendant shall not possess, install or use any monitoring instrument, camera, or other surveillance device to observe or alert them to the approach of his/her probation officer. The defendant shall not keep any vicious or dangerous dog or other animal on or in their property that the probation officer perceives as an impediment to accessing the defendant or their property. AD
17. **Abandoning Supervision:** The defendant will not leave the state or the assigned district in an effort to abscond or flee supervision. The defendant shall make himself/herself available for supervision and program participation as instructed by the probation officer and will not actively avoid supervision. AD
18. **Court Ordered Financial Obligations:** The defendant shall pay all costs, fees, fines and restitution in the amount and manner and to the parties ordered by the Court. The defendant shall make payments as ordered by the Court or as designated in a Payment Agreement and Promissory Note to be completed with an agent of the Idaho Dept of Correction. AD
19. **Confidential Informant:** The defendant shall not act as a confidential informant for law enforcement, except as allowed in Idaho Dept of Correction policy and with the written consent of both the Court and the Idaho Dept. of Correction. AD
20. **Intrastate/Interstate Violations:** If allowed to transfer supervision to another district or state the defendant agrees to accept any violation allegation documents purportedly submitted by the agency/officer supervising the defendant in the receiving district or state as admissible into evidence as credible and reliable. The defendant waives any right to confront the author of such documents. AD
21. **Additional Rules:** The defendant agrees that other supervision rules may be imposed depending on the district or specific field office that provides his/her supervision. At all times, these additional rules will be imposed only after considering the successful supervision of the defendant and the secure operation of the district or specific field office. All additional rules will be explained to the defendant and provided to him/her, in writing, by an agent of the Idaho Dept of Correction. AD

EXHIBIT 2**COURT ORDERED****SPECIFIC CONDITIONS OF PROBATION****IMPOSED IN ADDITION TO THE EXHIBIT 1 GENERAL CONDITIONS****I.C. § 20-221**

1. **Stipulate to the admission of test results:** Should the defendant be requested to submit to tests for controlled substances, the defendant shall stipulate to the admission of those blood, urine, or breath test results in the form of a certified affidavit at any probation hearing following a judicial determination that live testimonial evidence would otherwise be impractical. However, the defendant, at the defendant's own expense may have the lab analysis of the defendant's blood, urine, or breath performed at an in-state approved lab of the defendant's choosing upon notifying the official administering the test at the time the test is requested. AP
2. **Discretionary county jail time to be served in the future:** The defendant shall serve not more than 30 days in the county jail at the discretion of the defendant's probation officer, with the prior approval of the Court. Any time spent in jail pursuant to an Agent's Warrant and/or for absconding supervision does not count against this discretionary jail time. AP
3. **Polygraph examinations:** The defendant shall submit to polygraph examinations at the defendant's own expense when requested to do so by the defendant's probation officer. AP

I have read, or have had read to me, the above conditions of probation contained in **EXHIBIT 1** and **EXHIBIT 2**. I understand and accept these conditions of supervision. I agree to abide by and conform to them and understand that my failure to do so may result in the submission of a report of violation to the sentencing authority and revocation of my probation.


Defendant Signature


Witnessing Probation Officer's Signature

5/9/10
Date

Leslie C. Hoerner 5/17/10
Witnessing Probation Officer's Name (printed)